

\*E-Filed 7/17/14\*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

VINCENT PRICE MCCOWAN,

No. C 13-0407 RS (PR)

Plaintiff,

**ORDER DENYING MOTION FOR  
LEAVE TO FILE AN AMENDED  
COMPLAINT;**

v.

A. AVALOS,

**ORDER DENYING MOTION TO  
DISQUALIFY**

Defendant.

**INTRODUCTION**

This is a federal civil rights action filed pursuant to 42 U.S.C. § 1983 by a pro se state prisoner. Plaintiff's third amended complaint has been served on defendant, who is to file a dispositive motion on or before October 15, 2014.

Plaintiff since has filed an amended complaint (Docket No. 33), which the Court construes as a motion (1) for leave to file an amended complaint, and (2) to disqualify the judge presiding over this action. Both motions are DENIED.

**I. Motion for Leave to File an Amended Complaint**

By way of his amended complaint, plaintiff seeks to raise dismissed claims. Because plaintiff fails to provide sufficient reason to revive such claims, his motion for leave to file an

1 amended complaint is DENIED.

2 **II. Motion to Disqualify**

3 Plaintiff moves to disqualify the presiding judge for reasons the motion does not make  
4 clear. The Court infers that plaintiff asserts that the presiding judge is prejudiced and biased  
5 against him, as evidenced by the judge's failure to rule in his favor on his motions and  
6 requests. A party may move to disqualify, or recuse, a judge from presiding in a given case.  
7 Motions to disqualify fall under two statutory provisions, 28 U.S.C. § 144 and 28 U.S.C.  
8 § 455. Section 144 provides for recusal where a party files a timely and sufficient affidavit  
9 averring that the judge before whom the matter is pending has a personal bias or prejudice  
10 either against the party or in favor of an adverse party, and setting forth the facts and reasons  
11 for such belief. *See* 28 U.S.C. § 144. Similarly, § 455 requires a judge to disqualify himself  
12 "in any proceeding in which his impartiality might reasonably be questioned," 28 U.S.C.  
13 § 455(a), including where the judge "has a personal bias or prejudice concerning a party," *id.*  
14 § 455(b)(1).


15 A judge finding a § 144 motion timely and the affidavits legally sufficient must  
16 proceed no further and another judge must be assigned to hear the matter. *United States v.*  
17 *Sibla*, 624 F.2d 864, 867 (9th Cir. 1980). Where the affidavit is not legally sufficient,  
18 however, the judge at whom the motion is directed may determine the matter. *See id.* at 868  
19 (holding judge challenged under § 144 properly heard and denied motion where affidavit not  
20 legally sufficient).

21 The substantive test for personal bias or prejudice is identical under §§ 144 and 455.  
22 *See Sibla*, 624 F.2d at 868. Specifically, under both statutes recusal is appropriate where "a  
23 reasonable person with knowledge of all the facts would conclude that the judge's  
24 impartiality might reasonably be questioned." *Yagman v. Republic Ins.*, 987 F.2d 622,  
25 626 (9th Cir. 1993) (citation omitted). Consequently, an affidavit filed under § 144 will raise  
26 a question concerning recusal under §§ 455(a) and (b)(1) as well. *Sibla*, 624 F.2d at 867.

1 Here, as noted, plaintiff moves to disqualify the undersigned on the ground of  
2 prejudice and bias. Merely ruling against plaintiff is not sufficient to show prejudice or bias,  
3 however. *See Liteky v. United States*, 510 U.S. 540, 555 (1994) (holding judicial rulings on  
4 basis of facts introduced or events occurring in course of judicial proceedings “almost never”  
5 provide grounds for recusal); *Sibla*, 624 F.2d at 868 (holding affidavit not legally sufficient  
6 unless it alleges facts demonstrating bias or prejudice that “stems from an extrajudicial  
7 source”). In sum, plaintiff’s allegations categorically fail to establish any basis, under either  
8 § 144 or § 455, for a determination that the Court’s impartiality might reasonably be  
9 questioned herein, and, consequently, are insufficient as a matter of law. Accordingly,  
10 plaintiff’s motion to disqualify is DENIED.

11 **IT IS SO ORDERED.**

12 DATED: July 17, 2014

  
RICHARD SEEBORG  
United States District Judge

United States District Court  
For the Northern District of California